

1 **MICHELLE BETANCOURT**

California Bar No. 215035

2 **HANNI M. FAKHOURY**

California Bar No. 252629

3 **FEDERAL DEFENDERS OF SAN DIEGO, INC.**

225 Broadway, Suite 900

4 San Diego, California 92101-5008

Telephone: (619) 234-8467

5 Hanni\_Fakhoury@fd.org

6 Attorneys for Mr. Snow

7  
8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 (HONORABLE JANIS L. SAMMARTINO)

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 **BRENT SNOW, ET AL.,**

15 Defendant.

) CASE NO.: 09CR2195-JLS

)  
) SUPPLEMENTAL MEMORANDUM OF POINTS  
) AND AUTHORITIES IN SUPPORT OF MOTIONS  
) TO SUPPRESS

16  
17 **I.**

18 **STATEMENT OF FACTS**

19 Mr. Snow hereby incorporates by reference the statement of facts set forth in previous motions filed  
20 in this case.

21 **II.**

22 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

23 **A. The Stop and Subsequent Warrantless Search of the Truck Violated the Fourth Amendment.**

24 In his motion to dismiss, Mr. Snow argued that the stop and search of the truck were improper under  
25 the Fourth Amendment. The officers had no reasonable articulable suspicion that criminal activity was  
26 occurring when they stopped the truck co-defendant Mr. Villareal was driving - and in which Mr. Snow was  
27 a passenger immediately prior to the stop. At the time the truck was stopped, there was no indication of any  
28 criminal activity occurring. Although marijuana had been found in the boat the truck was hauling

1 approximately two weeks earlier, there was nothing to suggest that a shipment of marijuana would be  
2 concealed within the boat on May 9, 2009. Furthermore, the agents conducting surveillance on the truck  
3 witnessed absolutely no criminal activity or illegal conduct when they stopped the truck. Therefore, the stop  
4 of the truck violated the Fourth Amendment. See United States v. Rodriguez, 976 F.2d 592, 594 (9th Cir.  
5 1992), amended 997 F.2d 1306 (9th Cir. 1993) (officer may not detain a motorist without a showing of a  
6 “particularized and objective basis for suspecting the particular person stopped of criminal activity” (quoting  
7 United States v. Cortez, 449 U.S. 411, 417-18 (1981)). Although Mr. Snow was not in the truck at the time  
8 the agents stopped it, he had been a passenger in the truck immediately before the stop of Mr. Villareal.  
9 Therefore, even though only a passenger, Mr. Snow does have standing to challenge "the legality of his own  
10 detention." United States v. Pulliam, 405 F.3d 782, 787 (9th Cir. 2005) (quoting United States v. Nava-  
11 Ramirez, 269 F.3d 1128, 1132 (10th Cir. 2001).

12 The "fruit" of this illegal stop of the truck was that the agents were able to board and search the boat  
13 being hauled by the truck, as well as the cab of the truck. These searches were improper as the fruit of an  
14 illegal stop. Wong Sun v. United States, 371 U.S. 471, 488 (1963). Nor can the search of the truck be  
15 justified as a search incident to arrest given the Supreme Court's recent decision in Arizona v. Gant, 129  
16 S.Ct. 1710 (2009) which only permits such searches if "the arrestee is within reaching distance of the  
17 passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence  
18 of the offense of arrest." Gant, 129 S.Ct. at 1723. At the time the truck was being searched, Mr. Villareal  
19 was not inside the passenger compartment and was not within reaching distance of the passenger  
20 compartment. Therefore, the agents could not rely on "search incident to arrest" exception to the warrant  
21 requirement and accordingly the search of the truck was invalid as the "fruit" of the unlawful traffic stop.

22 Mr. Snow accordingly requests this Court suppress any and all evidence found in both the truck and  
23 the boat that the government intends to introduce as evidence at trial, including, but not limited to the  
24 marijuana found concealed in the boat.

25 **B. The Two Warrantless Searches of the Boat Violated the Fourth Amendment.**

26 The boat involved in this case has been searched by the agents without a warrant twice: on April 27,  
27 2009 and May 9, 2009.

28 //

1           1.       April 27, 2009

2           The search of the boat on April 27, 2009 was based on the consent of a government informant who  
3 the government alleges had a possessory interest in the boat and gave the agents consent to search the boat.  
4 The burden is on the government to demonstrate that a individual consenting to a search has "common  
5 authority" over the item searched. Illinois v. Rodriguez, 497 U.S. 177, 181 (1990) (citations omitted). Here,  
6 the government has presented no evidence at all that the confidential informant had a possessory interest or  
7 "common authority" over the boat to permit its warrantless search.

8           Mr. Snow therefore specifically requests any and all discovery on the confidential informant and  
9 requests this Court hold the government to its burden at the evidentiary hearing of showing that the agents  
10 had direct knowledge that the confidential informant had "common authority" over the boat to consent to  
11 its search. If the government cannot meet this burden, the evidence seized as a result of that search - the 5  
12 kilogram brick of marijuana - as well as any and all investigative leads as a result of that search, including  
13 but not limited to the results of the tracking device placed on the boat, must be suppressed.

14           2.       May 9, 2009

15           The fruits of the warrantless search of the boat - including, but not limited to the marijuana found  
16 on board - on May 9, 2009 must be suppressed because as argued above, the boat was only searched as a  
17 result of the illegal stop on the truck. Furthermore, as Mr. Snow argued in his original motions, the officers  
18 did not have probable cause to believe there would be marijuana or any other contraband inside of the boat  
19 to permit them to search it without a warrant pursuant to the "automobile exception" to the Fourth  
20 Amendment. See United States v. Ross, 456 U.S. 798, 825 (1982); Carroll v. United States, 267 U.S. 132,  
21 153 (1925) (covering searches of "a ship, motor boat, wagon or automobile"); United States v. Kaiyo Maru  
22 No. 53, 699 F.2d 989, 998 (9th Cir. 1983) ("The Carroll exception extends to vessels as well as automobiles  
23 and other movable vehicles. . .").

24           Assuming the government argues that the search of the boat was permissible under the "border search  
25 doctrine," the search is still improper because the agents could not be "reasonably certain" when the boat  
26 and its contraband contents crossed the border. United States v. Bennett, 363 F.3d 947, 950 (9th Cir. 2004)  
27 (citing United States v. Dobson, 781 F.2d 1374, 1376 (9th Cir.1986). The Ninth Circuit has explained that  
28 the "'reasonably certain' standard is higher than a probable cause standard." Bennett, 363 F.3d at 950 (citing

1 United States v. Kessler, 497 F.2d 277, 279 (9th Cir.1974)). Without the aid of the search incident to arrest,  
2 automobile and border search exceptions to the Fourth Amendment, the search of the boat was unreasonable  
3 and violated the Fourth Amendment. Therefore any fruits as a result of the search of the boat - including the  
4 marijuana, any items found in the boat the government intends to use at trial, and as argued below, the arrest  
5 of Mr. Snow - must be suppressed.

6 **C. The Warrantless Arrest of Mr. Snow and Search of His Hotel Room Was Unreasonable.**

7 Compounding one constitutional violation after another, a fruit of the unlawful search of the boat -  
8 itself being the fruit of the unlawful stop of the truck - was the warrantless arrest of Mr. Snow and the search  
9 of his hotel room and personal belongings.

10 A warrantless arrest is only reasonable if the officers have "probable cause" the person being arrested  
11 committed a crime. Michigan v. Summers, 452 U.S. 692, 700 (1981). "Probable cause to arrest exists when  
12 officers have knowledge or reasonably trustworthy information sufficient to lead a person of reasonable  
13 caution to believe that an offense has been or is being committed by the person being arrested." United States  
14 v. Lopez, 482 F.3d 1067, 1072 (9th Cir. 2007) (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)). "Mere  
15 suspicion" or even a "strong reason to suspect" are not enough to support a warrantless arrest. Ramirez v.  
16 City of Buena Park, 560 F.3d 1012, 1023 (9th Cir. 2009) (citing Henry v. United States, 361 U.S. 98, 101  
17 (1959)).

18 The officers did not have probable cause to arrest Mr. Snow because they had no evidence  
19 whatsoever that he knew of the drugs concealed in the boat or was involved in a conspiracy to smuggle drugs  
20 across the border. Without probable cause, the warrantless arrest of Mr. Snow was unlawful and any fruits  
21 of that arrest must be suppressed - including any items seized from Mr. Snow or seized as a result of the  
22 attendant search of the hotel room and his personal belongings.

23 //

24 //

25 //

26 //

27 //

28 //

1 **III.**

2 **CONCLUSION**

3 For these reasons, as well as those stated in his original motion to suppress, Mr. Snow respectfully  
4 requests that this Court grant the motions to suppress.

5 Respectfully submitted,

6  
7 Dated: August 23, 2009

/s/ Hanni M. Fakhoury  
**HANNI M. FAKHOURY**  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Snow

1 **CERTIFICATE OF SERVICE**

2 Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his  
3 information and belief, and that a copy of the foregoing document has been served this day upon:

4 **THOMAS SNYDER**  
5 Assistant United States Attorney  
6 880 Front Street  
7 Room 6293  
8 San Diego, CA 92101  
(619) 557-7171  
9 Fax: (619) 557-3445  
10 Email: Thomas.Snyder@usdoj.gov

11 **ROBERT E. BOYCE**  
12 Boyce and Shaffer  
13 934 23rd Street  
14 San Diego , CA 92102  
15 (619)232-3320  
16 Fax: (619)232-8271  
17 Email: reboyce@pacbell.net

18  
19 Respectfully submitted,

20  
21 Dated: August 25, 2009

22 /s/ Hanni M. Fakhoury  
23 **HANNI M. FAKHOURY**  
24 Federal Defenders of San Diego, Inc.  
25 Attorneys for Mr. Snow  
26  
27  
28